

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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**FILE:** B-209806

**DATE:** November 29, 1982

**MATTER OF:** Delta Food Service

**DIGEST:**

The Small Business Administration has wide discretion in selecting firms for awards under the section 8(a) program of the Small Business Act. GAO's review of such selections therefore is limited to determining whether the SBA has complied with pertinent regulations and whether Government officials have committed fraud or acts of bad faith.

Delta Food Service, a participant in the Small Business Administration's (SBA) section 8(a) program, protests the SBA's selection of another 8(a) company to furnish food services to the Air Force in San Antonio, Texas. Delta complains that the SBA's method of choosing 8(a) contractors is inconsistent, and that it should have been selected because it is located in San Antonio, whereas the other 8(a) firm is not. We dismiss the protest.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. IV 1980), authorizes the SBA to enter into contracts with any Government agency with procuring authority and to arrange for performance of the contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The act provides the SBA and participating contracting agencies with wide discretion in its section 8(a) decisions. Our review of actions under the section 8(a) program therefore generally is limited to determining whether the SBA has followed pertinent regulations and whether Government officials have committed acts of fraud or bad faith. Health Services International, Inc., B-205060, May 25, 1982, 82-1 CPD 495.

Delta's contention that the SBA's method of choosing 8(a) contractors is inconsistent is based on letters from the SBA to two of Delta's congressional representatives. A November 1981 letter states that SBA attempts to select 8(a) contractors located in the same district where the contract is to be performed, while an October 1982 letter states that the 1981 advice was erroneous, and that selection is based on need and capability, not jurisdictional lines. Delta evidently relies on the 1981 advice in suggesting that it should have been selected for this particular subcontract.

The 1982 letter, however, expressly was intended to clarify the SBA's current approach to selecting 8(a) contractors in a respect that the SBA conceded was not accurately represented in the 1981 letter. That approach clearly is within the SBA's discretion in administering the section 8(a) program. The SBA selection in this case was not contrary to any of the regulations that implement the section 8(a) program, see 13 C.F.R. part 124 (1982), and Delta has not submitted any evidence indicating that a Government official has committed fraud or acts of bad faith in this particular contracting decision. In this respect, to sustain a charge of bad faith a protester must submit virtually irrefutable evidence that the agency had a specific and malicious intent to injure the party alleging bad faith. Health Services International, Inc., supra.

We therefore have no legal basis to review the award in issue. The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel